

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**SOUTH ORANGE CHIROPRACTIC  
CENTER, LLC** individually, and on behalf  
of all others similarly situated,

Plaintiff,

v.

**CAYAN LLC d/b/a CAPITAL BANKCARD,**

Defendant.

**CIVIL ACTION  
No. 15-13069-PBS**

**DEFENDANT’S MOTION FOR INTERLOCUTORY APPEAL  
PURSUANT TO 28 U.S.C. § 1292(b) AND FOR A STAY OF PROCEEDINGS**

Defendant Cayan LLC d/b/a Capital Bankcard (“Cayan”) moves this Court under 28 U.S.C. section 1292(b) for an order certifying for interlocutory appeal the Court’s April 12, 2016 Order denying in part Cayan’s motion to dismiss. This motion is made on the ground that the Court’s Order presents the following controlling legal question for which interlocutory appeal may materially advance the ultimate termination of the litigation:

Does the “inherently transitory” exception to mootness apply to a request for monetary damages for absent class members where the plaintiff’s individual claim is moot and injunctive relief has been offered to the class?

This question meets the criteria for certification under section 1292(b) because it (1) “involves a controlling question of law,” (2) “as to which there is substantial ground for difference of opinion” and (3) an “immediate appeal . . . may materially advance the ultimate termination of the litigation.” *See* 28 U.S.C. § 1292(b).

Cayan further moves for an order staying proceedings in this action pending the First Circuit's determination whether to grant an interlocutory appeal under Section 1292(b) and the conclusion of any appellate proceedings.

This motion is based upon this Notice of Motion, the accompanying Memorandum of Law, and such other evidence and further arguments as may be presented at any hearing, should the Court wish to hear argument on this motion.

WHEREFORE, for the reasons set forth in the accompanying Memorandum of Law, Cayan requests that the Court grant its Motion for Interlocutory Appeal Pursuant to 28 U.S.C. section 1292(b) and for Stay of Proceedings.

Dated: May 6, 2016

Respectfully submitted,

CAYAN LLC D/B/A CAPITAL BANKCARD

By its attorneys,

/s/ Christine M. Reilly

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**CERTIFICATION PURSUANT TO LOCAL RULE 7.1**

I, Christine M. Reilly, counsel for Defendant Cayan LLC hereby certify that on April 25, 2016, counsel for Defendant conferred with Plaintiff's counsel, Anthony Paronich, Esq., in a good faith effort to resolve or narrow the issues presented.

/s/ Christine M. Reilly

**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing document to be filed through the Court's ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing, and paper copies will be sent to those indicated as non-registered participants on May 6, 2016.

/s/ Christine M. Reilly

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